

Honorable Judge Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY
SPENCER, and KATHRYN E. TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY
JAMES M. PETERS, DETECTIVE
SHARON KRAUSE, SERGEANT
MICHAEL DAVIDSON, CLARK COUNTY
PROSECUTOR'S OFFICE, CLARK
COUNTY SHERIFF'S OFFICE, THE
COUNTY OF CLARK, SHIRLEY
SPENCER, and JOHN DOES ONE
THROUGH TEN,

Defendants.

NO. C11-5424-BHS

AMENDED STIPULATION
AND ~~PROPOSED~~ ORDER
CONTINUING TRIAL AND
PRETRIAL DATES

I. STIPULATION

The Parties, through their counsel, stipulate as follows and respectfully request the Court enter the proposed Order Continuing Trial and Pretrial Dates. Counsel notified Courtroom Deputy Gretchen Craft of the Parties' stipulation and request for an order continuing the trial and pretrial dates by telephone on February 15, 2013 and were asked to

AMENDED STIPULATION AND [PROPOSED]
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DATES

C11-5424-BHS

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1 submit a Stipulation and Proposed Order for the Court's consideration. The parties filed a
2 Stipulation and [Proposed] Order Continuing Trial and Pretrial Dates on February 16, 2013
3 (Dkt. 155), and have now been asked by Court staff to file an Amendment to that Stipulation
4 and [Proposed] Order to provide a date certain for consideration of Defendants Davidson's and
5 Krause's pending summary judgment motions and filing of reply briefs, and identification of
6 which pretrial dates the parties wish to have re-set.

7 Trial is currently scheduled to commence on April 16, 2013. Dkt. 49. On February 13,
8 2013, this Court entered an Order Denying Defendants' Motion to Strike Plaintiff's Second
9 Supplemental Disclosure and to Bar Testimony, in which the Court conditioned plaintiff's use
10 of a newly disclosed witness, Menona Landrum, upon the following, in part: "The Court will
11 allow Defendants to conduct supplemental discovery regarding the allegations surrounding the
12 quitclaim deed and depose Ms. Landrum. . . . Additionally, upon a showing that Defendants
13 are unable to fully respond to Spencer's newly disclosed evidence before trial, the Court will
14 consider a motion to continue the trial date." Dkt. 149, p. 5.

15 All three Defendants have summary judgment motions pending. Dkt. 133, Dkt. 135
16 and Dkt. 139. Plaintiff's responsive pleadings to all three motions were filed on February 14,
17 2013, and include citation to and argument regarding the newly disclosed witness and quit
18 claim deed. Dkt. 150, Dkt. 151 and Dkt. 152. Defendants' reply pleadings were due Friday,
19 February 22, 2012. Dkt. 141. Defendants Davidson and Krause intend to conduct
20 supplemental discovery regarding the quit claim deed and knowledge and testimony of Ms.
21 Landrum, including at least retaining a handwriting expert for consultation and possible
22 testimony, requesting production of other documents notarized by Ms. Landrum and possibly
23 plaintiff, and deposing Ms. Landrum. These defendants were unable to conduct this
24 supplemental discovery in time to fully respond to the newly disclosed evidence in the
25 summary judgment reply pleadings due Friday, February 22, 2013.

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1 Counsel for all parties conducted a telephone conference call the morning of February
2 15, 2013, during which counsel for Defendants set forth their position regarding the need for
3 more time to conduct the supplemental discovery, and counsel for plaintiff stipulated that
4 additional time is needed. During the telephone conference call, all counsel also addressed the
5 subject of conducting the Local Rule CR 39.1 settlement conference required under the current
6 scheduling Order to be completed by February 15, 2013 (Dkt. 49), and the Parties agree that
7 such discussions are premature given the status of additional discovery and pending motions.
8 The Parties agree that the trial date should be continued, with new corresponding pretrial dates
9 for a settlement conference per Local Rule CR 39.1(c)(2), mediation per Local Rule CR
10 39.1(c) and the related letter of compliance, motions in limine, agreed pretrial order and
11 pretrial conference which allow all Parties to fully and fairly comply with all obligations and
12 deadlines.

13 Given the following conflicts for trial counsel for the Parties, the Parties respectfully
14 request that the trial date in this matter be continued to January, 2014.

15 Counsel for Plaintiff: March, 2014;

16 Counsel for Defendant Peters: unavailable prior to October 27, 2013, also unavailable
17 November 12-18, 2013;

18 Counsel for Defendant Krause: May 1-23, 2014;

19 Counsel for Defendant Davidson: September 9-20, 2013; November 4-15, 2013;
20 February 3-28, 2014.

21 Regarding the Defendants' pending summary judgment motions, the Parties agree that
22 the newly disclosed evidence has no bearing on the claims against Defendant Peters, so
23 Defendant Peters' reply brief will remain due on February 22, 2013. However, Defendants
24 Davidson's and Krause's pending summary judgment motions will be re-noted for consideration,
25 consideration, and their reply briefs will be due, on April 12, 2013.
26

1 So stipulated and agreed:

2 /s/ Kathleen T. Zellner
 3 Kathleen T. Zellner & Associates, P.C.
 4 Admitted *pro hac vice*
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 10 Attorney for Plaintiffs

/s/ Jeff Freimund
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 Attorneys for Defendant Davidson

9 /s/ Guy Bogdanovich
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 18 Attorneys for Defendant Krause

/s/ Patricia C. Fetterly
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 Attorneys for Defendant Peters

18 II. ORDER

19 Based on the foregoing stipulation,

20 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the trial date in this
 21 matter is continued to Jan. 7, 2014, and that an Order will be entered setting new
 22 pretrial dates for a settlement conference per Local Rule CR 39.1(c)(2), mediation per Local
 23 Rule CR 39.1(c) and the related letter of compliance, motions in limine, agreed pretrial order
 24 and pretrial conference accordingly.

25 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that
 26 Defendants Davidson's and Krause's pending summary judgment motions (Dkt. 133 and Dkt.

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1 139) are hereby continued, and should be re-noted for consideration on April 12, 2013, with
2 reply pleadings due on that date. Defendant Peters' reply brief remains due on February 22,
3 2013, as currently noted based on the Parties' stipulation the newly discovered evidence has no
4 bearing on Defendant Peters' summary judgment motion.

5 DONE IN OPEN COURT this 28 day of February, 2013.

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7 
8 U. S. DISTRICT JUDGE BENJAMIN H. SETTLE
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13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on February 27, 2013, I caused to be electronically filed the
15 foregoing document with the Clerk of the Court using the CM/ECF system which will send
16 notification of such filing to the following:

17 Douglas H. Johnson, Attorney Pro Hac Vice for Plaintiff Clyde Ray Spencer
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25 Patricia C. Fetterly, Attorney for Defendant James M. Peters
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Jeffrey A.O. Freimund, Attorney for Defendant Michael Davidson
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/s/ Lisa Gates

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